469

FILE COPY

FILED
SEP 20 1972

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-469

BRADFORD TOWNSHIP, et al.,

Petitioners,

vs.

ILLINOIS STATE TOLL HIGHWAY AUTHORITY, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

DAVID LINCOLN ADER, Esq.
233 East Walton Place
Chicago, Illinois 60611
312-337-6285 or 312-726-4904

Attorney for Petitioners

MIDWEST LAW PRINTING CO., CHICAGO 60601. FINANCIAL 6-3988

TABLE OF CONTENTS

PAGE

DATE OF JUDGMENT SOUGHT TO BE REVIEWED AND CHARACTER OF PROCEEDINGS BELOW 1

THE OPINION BELOW 2

JURISDICTION 2

THE STATUTES INVOLVED 3

QUESTIONS PRESENTED 3

STATEMENT OF THE CASE 4

REASONS FOR GRANTING THE WRIT 10

I.

The Appellate Court erred in ruling that a violation of the Illinois Meetings of Public Agencies Act which denied Petitioners their opportunity to defend their right to a protected and healthful environment did not violate the due process clause of the United States Constitution and the decision of the Appellate Court contravenes numerous and repeated decisions of this Court and conflicts with decisions of the Sixth and Ninth Circuits and the District Court for the Eastern District of Pennsylvania in holding that a state Agency's Act resulting in the taking or damaging of land and the general environment in violation of the procedural process specified by the State Sovereign is not a violation of the due process

clause of the Fourteenth Amendment to the United States Constitution 10

A.

The Seventh Circuit erred in holding that the deprivation of a federally recognized right by a State Agency acting in violation of law is not a violation of due process guaranteed by the Fourteenth Amendment to the United States Constitution and Section 1983 of the Federal Civil Rights Act 10

B.

The Court of Appeals for the Seventh Circuit contravened repeated holdings of this Court that a violation of state law can be redressed in federal court where the federal guarantee to due process is also violated thereby 19

II.

The Court of Appeals for the Seventh Circuit erred in not enforcing Petitioners' rights to a protected, enhanced and healthful environment under §4331(c) of the National Environmental Policy Act and in not enforcing Respondents' duties to protect and enhance the environment under §4331(a) and (c) of the National Environmental Policy Act in contravention of the plain meaning of those provisions and the Court of Appeals for the Seventh Circuit by not enforcing §4331(a) and (c) of the National Environmental Policy Act disregarded rules established by this court for statutory interpretation, nullified provisions of an Act of Congress, ignored the intent

of Congress, and placed itself in conflict with decisions of the First, Third, Sixth, Tenth and District of Columbia Circuits, and the District Court for New Jersey, and its own precedent 21

CONCLUSION 33

APPENDIX 1a-22a

CITATIONS

Cases

Bank of Columbia v. Okely, 4 Wheat. (17 U.S.) 235 (1819) 15

Boom Co. v. Patterson, 98 U.S. 403 (1878) 13

Carter's Heirs v. Cutting & Wife, 12 U.S. (8 Cran.) 251 (1814) 26

Chicago, B. & Q. R.R. Co. v. Chicago, 166 U.S. 226, 241 (1897) 13, 14, 18

Cuyahoga River Power Co. v. City of Akron, 240 U.S. 462 (1916) 14

Department of Public Works v. Ryan, 357 Ill. 150 (1934) 18

Donovan v. Mobley, 291 F. Supp. 930 (C.D. Calif. 1968) modified on other grounds, 433 F. 2d 738 (9th Cir. 1970) 15

Environmental Defense Fund v. Corps of Engineers of the U.S. Army, 325 F. Supp. 749 (E.D. Ark. 1971) 24

Ex Parte Public Bank, 278 U.S. 101 (1928) 25

Fegan v. Lykes Bros. S.S. Co., 198 La. 312, 3 So. 2d 632 (1941) 26

Green Street Association v. Daley, 373 F. 2d 1 (7th Cir. 1967) 11, 17
Hagar v. Reclamation District No. 108, 111 U.S. 701 1884) 16
Harrison-Halsted Community Group, Inc. v. Housing and Home Finance Agency, 310 F. 2d 99 (7th Cir. 1962) 17
Henry v. U.S., 251 U.S. 393 (1919) 26
Hilliard v. U.S., 310 F. 2d 631 (6th Cir. 1962) 26
Holden v. Hardy, 169 U.S. 366 (1898) 18
Izaak Walton League v. Macchia, 2 E.R.C. 1661 (D.N.J. 1971) 29
Johnson v. U.S., 163 Fed. 30 (1st Cir. 1908) 28
McQueary v. Laird, 449 F. 2d 608 (10th Cir. 1971) 23
Mary F. Barnett, The, 279 Fed. 329 (3rd Cir. 1922) 26
Missouri Pacific Ry. Co. v. Humes, 115 U.S. 512 (1885) 15
Monroe v. Pape, 365 U.S. 167 (1960) 19
Montclair v. Ramsdell, 107 U.S. 147 (1882) 25, 26
Moragne v. States Marine Lines, 398 U.S. 375 (1970) 28
Mosher v. City of Phoenix, 287 U.S. 29 (1932) 12, 13, 19
Murphy v. Chicago League Ball Club, 221 Ill. App. 120 (1921) 26
Niagara Fire Extinguisher Co. v. Hibbard, 179 Fed. 844 (7th Cir. 1910) 26
Powelton Civic Home Owners Assoc. v. Department of Housing and Urban Development, 284 F. Supp. 809 (E.D. Pen. 1968) 17
Progress Development Group v. Mitchell, 286 F. 2d 222 (7th Cir. 1961) 18, 20
San Antonio Conservation Society v. Texas Highway Department, 400 U.S. 968 (1970) 22
Smyth v. Ames, 169 U.S. 466 (1898) 19
State v. Bruton, 383 S.W. 2d 525 (Md. Sup. Ct. 1964) 26

Steele v. L. & N.R. Co., 323 U.S. 192 (1944) 32
Tag v. Rogers, 267 F. 2d 664 (D.C. Cir. 1959) 28
Town of Edgewater v. Liebhardt, 32 Colo. 307, 76 P. 366 (1904) 26
U. S. v. Cruikshank, 92 U.S. 542 (1875) 15
U. S. v. Fisher, 109 U.S. 143 (1883) 25
Van Beeck v. Sabine Towing Co., Inc., 300 U.S. 342 (1937) 28
Van Camp & Sons v. American Can Co., 278 U.S. 245 (1928) 25, 26
Weaver v. Pennsylvania-Ohio Power & Light Co., 10 F. 2d 759 (6th Cir. 1926) 15
Williams v. Kaestner, 332 S.W. 2d 21 (Mo. Ct. App. 1960) 26
Wolf v. Colorado, 338 U.S. 25 (1949) 18

Other Authorities

Bouvier's Law Dictionary Unabridged (8th ed.) 26
Congressional Record, December 20, 1969, p. 40419 27
Senate Report 91-351, 91st Cong., 1st Sess. 37 (1969) .. 28

Statutes

Vol. 7, p. 7431, Title 28 U.S.C., Ch. 3, §46(a)(b)(d) 15a
Vol. 7, p. 7562, Title 28 U.S.C., Ch. 83, §1291 ..... 15a
Vol. 7, p. 7560, Title 28 U.S.C., Ch. 81, §1254(1) 15a
Vol. 7, p. 7636, Title 28 U.S.C., Ch. 133, §2101(c) 16a
Vol. 7, p. 7702, Title 28 U.S.C., Appendix, Rules of Appellate Procedure 16a
Vol. 7, p. 7566, Title 28 U.S.C., Ch. 85, §1331(A) 17a
Vol. 7, p. 7571, Title 28 U.S.C., Ch. 85, §1343(4) 18a
Vol. 9, p. 10657, Title 42 U.S.C., Ch. 55, Sub-Ch. I, §4321 ..... 24, 18a

Vol. 9, p. 10664-5, Title 42 U.S.C., Ch. 55, Sub-Ch. §4331 (a)(b)(c) 11, 18, 21, 22, 23, 24, 26, 27, 18a
Vol. 9, p. 10669, Title 42 U.S.C., Ch. 56, §4371(b)(1)(2) 21, 25, 27, 20a
Vol. 9, p. 10283, Title 42 U.S.C., Ch. 21, Sub-Ch. I, §1983 ..... 18, 20, 20a
Fourteenth Amendment, United States Constitution, §1 ..... 20a
Article XI, Illinois Constitution of 1970, §2 ..... 21a
Vol. 2, p. 1558, ch. 102, Illinois Revised Statutes, §42 ..... 12, 21a

Constitutions

U. S. Const., Amendment XIV 15, 18, 20
Illinois State Constitution, 1970, Art. XI, §2 ..... 11, 18

IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No.

BRADFORD TOWNSHIP, et al.,

Petitioners,

vs.

ILLINOIS STATE TOLL HIGHWAY AUTHORITY, et al.,

Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

[All italics ours; (App.) means Appendix to this Petition; (R. App.) means Appendix from Court of Appeals.]

Petitioners are comprised of four Townships, 39 individuals who reside in the area through which the proposed Illinois Toll Highway is planned to cross and an unincorporated association of residents and land owners

in that same area affected by the proposed construction. They pray that a Writ of Certiorari issue to review the judgment of the United States Court of Appeals for the Seventh Circuit entered in this cause dismissing Petitioners' Complaint for failure to state a claim upon which relief can be granted and which judgment was entered and became final on June 22, 1972 by affirmance of the District Court's decision dismissing Petitioners' Complaint for failure to state a cause of action upon which relief can be granted (App. 1 *et seq.*).

THE OPINION BELOW.

The opinion of the United States Court of Appeals for the Seventh Circuit is not reported at the present time.

JURISDICTION.

The judgment of the United States Court of Appeals for the Seventh Circuit was entered and became final on June 22, 1972 (App. 1 *et seq.*). The jurisdiction of this Court is invoked under provisions of §1254 of the Judicial Code (28 U.S.C. §1254). (App. 15a).

STATUTES INVOLVED.

The various statutes involved are listed in the index and set forth in the appendix.

QUESTIONS PRESENTED.

1. Whether the Court of Appeals erred in holding that Petitioners were not denied due process of law when the Illinois State Toll Highway Authority started damaging and destroying their environment by building a tollway extension in violation of Petitioners' right to a protected and healthful environment without holding the public meetings required by state law at which the decision to build and to finance the extension should have been made.

2. Whether the Appellate Court erred in holding Section 4331 of the National Environmental Policy Act to be ineffective and in dismissing Petitioners' complaint based thereon for a failure to state a cause of action, in contravention of the clear language of the provision which bestows rights upon Petitioners and responsibilities upon Respondents.

STATEMENT OF THE CASE.

This appeal arises from a civil action brought in the United States District Court for the Northern District of Illinois under 28 U.S.C. §1331 and §1343(4) by Petitioners, Plaintiffs below, against Defendant-Respondent Authority, its board of directors, including ex officio officers, and its executive administrator, to enjoin them from constructing an extension to the East-West Toll Highway.[1]

The extension is planned to run west from Aurora, Illinois, to the outskirts of Rock Falls, Illinois. It will run diagonally from Aurora to the southern outskirts of De Kalb; it then parallels Alternate U.S. 30 to Rochelle, and proceeds diagonally to Dixon, Sterling and Rock Falls (R. App. 3, 7). This trapezoidal route is referred to by the Toll Highway Authority as a "diagonal curve." The extension is 69 miles long. As Petitioners have alleged in their Complaint below, the construction will completely destroy many of the finest agricultural acres in the nation. The majority of these acres could be preserved if the toll highway extension were built parallel to section lines rather than on the diagonal curve which will maximize severance and isolation of land. The present proposal removes 3,361 acres by severance (R. App. 7). The present estimated isolation is 2,102 acres (R. App. 7). The proposed extension itself consumes 2,365 acres (App. 7). The construction of this extension will close local roads and disrupt social and emergency services.

---

[1] Petitioners' Complaint below was dismissed on Respondents' motion to dismiss the Complaint and, therefore, under *Mosher v. City of Phoenix*, 287 U.S. 29 (1932), the allegations of the Complaint are taken as true.

The present plans for the tollway compel the closing of numerous local roads which are now used by emergency vehicles and all types of social service vehicles (R. App. 1, 13). The indiscriminate closing of these roads, rendering residents in the area inaccessible to ambulance, fire and police protection, will give rise to unhealthy and unsafe conditions (R. App. 1, 13).

Air pollution, which adversely affects humans, crops and animals, is set forth in the Complaint (R. App. 4-5, 12, 13). This air pollution is caused not merely by the presently existing traffic, but mostly by traffic generated as the direct result of the extension. The traffic and revenue report of Defendant Toll Highway Authority declares that a major portion of the traffic using the extension will be traffic which the construction of the extension itself generates, (termed "generated traffic"), which would not otherwise exist on any road (R. App. 6). The same traffic and revenue report states that long distance traffic has been taken by I-80, a new limited-access highway, and that only short distance commuter traffic remains for the extension in addition to the traffic of a generated nature. Interstate 80 is a free highway which also runs East and West, and is only a short distance to the South of the proposed extension (R. App. 6, 13). Furthermore, the Toll Highway Authority contemplates the development of industry and housing to line the proposed route (R. App. 6, 7, 8, 12). In fact, it is relying on this land development to create traffic to use the highway. This will inevitably take more acres out of agricultural production and add to drainage and pollution problems. These emissions of air pollutants caused by the construction of the extension will affect the quality and quantity of agricultural production in the vicinity of the toll

highway extension, will damage ornamental plants, and will affect both human and animal health. (R. App. 4-5, 12).

Furthermore, the State Toll Highway extension is proposed to cross a low lying area historically known as the "Great Swamp", which has been saved by use of proper drainage techniques, primarily drainage tiling, as some of the richest, most drought resistant farm land in America (R. App. 4). The present plans as alleged by Petitioners in their Complaint, show no understanding, concern or planning to avoid drainage disruption, flooding, erosion and loss of additional agricultural acres to swamp land where pests can breed. The water table is still high (R. App. 4, 12), and the destruction or disruption of the vital drainage facilities and present run-off patterns will inevitably lead to the loss of further rich, highly productive farm acres by their reversion to marsh land (R. App. 4, 12). Defendants-Respondents have not made and have no intention of making exploratory surveys to locate and preserve the crucial water drainage tiles, and no drainage system is planned for the tollway to prevent its disruption of existing run-off patterns (R. App. 6-7).

The area which this proposed highway will disrupt is unique in the nation and indeed in the world. The soil is the richest and most productive agricultural soil in the nation (R. App. 4, 11). It is also the most drought resistant soil in the State of Illinois (R. App. 4, 11) as well as the entire nation. The climate is excellently suited for agriculture (R. App. 4) and is the most stable climate for agriculture in the State and the nation (R. App. 4). The combination of these three outstanding factors in one place is rare (R. App. 4), rendering the soil production index (the amount of usable crop per acre) far

higher than the rest of the State and nation (R. App. 4, 11).

Not only is the area outstanding for the production of such consumer crops as sweet corn, soybeans, oats, green beans, peas, lima beans, tomatoes, alfalfa, asparagus and pumpkins (R. App. 4), but a substantial portion of the seed corn used to grow the sweet corn consumed by the nation is grown in this area (R. App. 4) because it is remarkably well suited to producing high quality seed.

Despite the importance of this area in meeting the nation's need for food, and despite the unique qualities which make this area agriculturally outstanding, Defendants did not consider any aspect of the environment in determining the route of the highway, nor did they consider whether the environmental damage might be too high a social cost for the possible social benefit. Defendants never commissioned or caused to be made any ecological or environmental study for the said proposed route (R. App. 6), although they did commission an engineering report concerning the specifications of the proposed extension itself and a traffic and revenue report concerning its profitability (R. App. 6).

The Authority, its members and officers, without studying the environmental cost or considering any alternative route, determined to construct this road through this unique area (R. App. 6). Once this determination was made, no study was commissioned or made to determine how the environmental effects of such construction could be minimized, and no efforts are presently being made to minimize the environmental damage which will ensue (R. App. 6-7).

Petitioners' Complaint maintains that this utter disregard for the environment is in violation of the national

policy established by two federal statutes, the National Environmental Policy Act (R. App. 7-8, 13-14), and the Environmental Quality Improvement Act (R. App. 8-9) and that this national policy is binding on the states.

In their Complaint, Petitioners seek an injunction permanently restraining construction of the tollway if the Court should find on trial that there is no valid justification for the road when environmental factors are considered; or alternatively, they seek to enjoin construction until studies are made by the Authority, its members and officers to determine the relative effect on the environment of alternatives and to balance the environmental cost against the social gain, all determinations being proven to have been made on evidence and facts warranting such a decision.

In addition, the decision to extend the tollway was made in closed, secret meetings of the Toll Highway Authority, not in public meetings with reasonable and effective prior notice as required by state law (R. App. 10). All the Petitioners have an immediate interest in the area of the proposed extension to the East-West Tollway. The four townships are all situated on its route, and each will be affected by its construction (R. App. 1). All of the individual Plaintiffs are residents of the area through which the proposed extension is to pass, and all have a direct interest in the quality of the environment in which they live (R. App. 2). Some are not only residents of the area, but are also owners of farms which will be dissected by the proposed route (R. App. 2). The Northern Counties Social Action Council is an unincorporated association whose members are all residents of the affected area and who have a substantial stake in the future of the environment in which they live (R. App. 2). Many of the Peti-

tioners, although they own no land which may be taken and thus would not be parties to any condemnation action, nevertheless will be affected by the environmental damage and construction created by the construction of the extension. Furthermore, the environmental damage which they will suffer is neither measurable in dollar terms nor compensable. Because the local process of condemnation is neither adequate nor available to all, Petitioners had only one effective opportunity to protect their property and environmental rights, namely attending the open meetings of the Toll Highway Authority and thereby influencing the Board of Directors in their decisions on these matters (R. App. 10). Plaintiffs would have attended the public meetings and put forth their arguments against the road at that time. Plaintiffs therefore further seek an injunction until public hearings are held in accordance with the Illinois Meetings of Public Agencies Act.

Respondents moved to dismiss the Petitioners' Complaint on two grounds: first, lack of federal jurisdiction, and second, the Complaint failed to state a claim upon which relief could be granted (R. App. 14). The District Court granted Respondents' motion to dismiss but its opinion and order did not make it clear on which of the two grounds the action had been dismissed. Petitioners and Respondents argued as to both grounds before the United States Court of Appeals for the Seventh Circuit and the United States Court of Appeals for the Seventh Circuit affirmed the District Court on the basis of a failure to state a cause of action upon which relief could be granted and made no mention of the issue of federal jurisdiction. Petitioners now appeal the Seventh Circuit decision and believe that if a federal cause of action is found by this Honorable Court the issue of federal jurisdiction will by that decision also be resolved.

ARGUMENT.

I.

THE APPELLATE COURT ERRED IN RULING THAT A VIOLATION OF THE ILLINOIS MEETINGS OF PUBLIC AGENCIES ACT WHICH DENIED PETITIONERS THEIR OPPORTUNITY TO DEFEND THEIR RIGHT TO A PROTECTED AND HEALTHFUL ENVIRONMENT DID NOT VIOLATE THE DUE PROCESS CLAUSE OF THE UNITED STATES CONSTITUTION

AND

THE DECISION OF THE APPELLATE COURT CONTRAVENES NUMEROUS AND REPEATED DECISIONS OF THIS COURT AND CONFLICTS WITH DECISIONS OF THE SIXTH AND NINTH CIRCUITS AND THE DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA IN HOLDING THAT A STATE AGENCY'S ACT RESULTING IN THE TAKING OR DAMAGING OF LAND AND THE GENERAL ENVIRONMENT IN VIOLATION OF THE PROCEDURAL PROCESS SPECIFIED BY THE STATE SOVEREIGN IS NOT A VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

A.

The Seventh Circuit Erred In Holding That The Deprivation Of A Federally Recognized Right By A State Agency Acting In Violation Of Law Is Not A Violation Of Due Process Guaranteed By The Fourteenth Amendment To The United States Constitution And Section 1983 Of The Federal Civil Rights Act.

The United States Court of Appeals for the Seventh Circuit held that:

> Plaintiffs-appellants allege that no public hearings were held as required by the Illinois Meetings of

Public Agencies Act. Suffice it to say that this is a state statute and, if valid,[2] might provide a cause of action in the state courts. It does not give rise to a cause of action cognizable by a federal court, nor does a failure to follow the requirements of the Act constitute a violation of a federally protected constitutional right. See *Green Street Association* v. *Daley*, 373 F. 2d 1 (1967) (App. 6a).

This position is without support and totally opposed to the holdings of this Honorable Court.

The Petitioners in this case will be damaged by the building of the extension of the East-West Tollway in ways not calculable in dollar terms. The land owner who can be made a party to a condemnation proceeding cannot prove damage in a dollar amount for the environmental and ecological upset and destruction which will affect his farm, his crops, his family and himself. Condemnation at best treats land solely as an economic asset. It is not cognizant of nor is it capable of handling the environmental rights recently recognized and protected by Congress in the National Environmental Policy Act, 42 U.S.C. §4331(c) and by Article XI, §2 of the Illinois Constitution of 1970.

Furthermore, many of the Petitioners are not land owners and are not parties to any condemnation. (R. App. 1, 2). However, they must all breathe the degraded air, suffer large pools of stagnant water—perhaps large areas of marshland—where mosquitoes will breed and other pests reside, and be affected to some degree by the reduction of productive farm land and the

---

[2] The validity of the Illinois Meetings of Public Agencies Act was not questioned by either party, and the court's statement "if valid" is in derrogation of the presumption of constitutionality and legality of all statutes.

deleterious effects on plant yield and health of humans and animals (R. App. 4-5, 6-7, 10). All will, in addition, suffer from the interruption and closing of local roads, rendering many of them either inaccessible or less accessible to emergency services such as fire, police and ambulance, and such social services as school buses (R. App. 13).

Because condemnation cannot protect the environment and is not even available to many of the Petitioners, their federally guaranteed rights to property and a healthful and protected environment must be protected by alternative proceedings designed and able to do so. The State of Illinois has designed such an alternative method of proceeding to ensure that those affected by governmental action can protect their environmental interests by being present when such decisions are made and influencing the discussions and decisions by their presence. Under the pressure of their presence and participation the decision-makers will be mindful of the environmental results of their plans and avoid or minimize such disturbance and destruction. Public meeting procedure ensures that the interests of those affected will be heard and their environmental interests protected, since environmental destruction can never be compensated or undone. This proceeding is established in Illinois by the Illinois Meetings of Public Agencies Act, 102 Ill. Rev. Stat. §42 *et seq.* (1969) (App. 21-22). The Illinois State Toll Highway Authority, its directors and administrators, all Respondents herein, are covered by this Act and were required to make the policy decisions to build the extension and the decision to fund it in public meetings.

Petitioners allege in their complaint, which must be taken as true on this Motion to Dismiss, *Mosher* v. *City*

of Phoenix, 287 U.S. 29 (1932), that the meetings required by the Illinois Meetings of Public Agencies Act to be open and public, were closed and secret and thus violated the Act (R. App. 10). Despite the fact that proper public meetings were not held, the Authority threatened condemnation in pursuance of its illegally passed resolutions at the time that this action was filed, and has since instituted such condemnation actions.

In these circumstances, the Court of Appeals for the Seventh Circuit in affirming the District Court's dismissal of Petitioners' Complaint for failure to state a cause of action has contravened the authority of this Court in failing to recognize three different and distinct violations of due process guaranteed by the United States Constitution.

First, this Court has long recognized that although the sovereign may be unrestrained in its power of eminent domain, once the sovereign places restrictions on its exercise, those limitations bind the sovereign. In *Boom Co.* v. *Patterson,* 98 U.S. 403, 406 (1878), this Court stated:

> The right of eminent domain, that is, the right to take private property for public uses, appertains to every independent government. It requires no constitutional recognition; it is an attribute of sovereignty. The clause found in the Constitutions of the several States providing for just compensation for property taken is a mere limitation upon the exercise of the right. . . . But notwithstanding the right is one that appertains to sovereignty, when the sovereign power attaches conditions to its exercise, the inquiry whether the conditions have been observed is a proper matter for judicial cognizance.

In the later case of *Chicago, Burlington & Quincy R.R. Co.* v. *Chicago,* 166 U.S. 226, 241 (1897), the sovereign

contravened the limitations it placed on its power of eminent domain (failure to pay compensation to the owner as required by state law) and this Court held that due process guaranteed by the Fourteenth Amendment of the United States Constitution was therefore violated. *Accord*: *Cuyahoga River Power Co.* v. *City of Akron*, 240 U.S. 462 (1916).

This Court further held in *Chicago, Burlington & Quincy R.R. Co.* v. *Chicago*, 166 U.S. 226, 234 (1897), that no matter which state governmental branch or agency violates a limitation placed on its exercise of eminent domain, the constitutional prohibition against taking without due process is violated, and that each state agency in proceeding to take property must keep within every regulation on the exercise of that power.

One of the limitations on the exercise of eminent domain which the State of Illinois placed on its agencies is that all meetings where resolutions are adopted determining the policy of whether a particular public project should be undertaken or funded, such as the meetings now at issue, must be public meetings.[3] The Illinois State Toll Highway Authority as a state agency is bound by that regulation. The Authority violated that limitation when it adopted resolutions first that an extension to the tollway was necessary and second to float bonds to finance it at closed and secret meetings (R. App. 10) to the detriment of Petitioners' property and environmental rights (R. App. 10-11) and thereby violated their federally guaranteed right to due process.

---

[3] The meetings concerned in this case were policy meetings and did not fall within any exception for meetings concerned with selecting particular parcels of land on which condemnation actions were to be begun.

Second, the Fourteenth Amendment guarantee of due process, like the Fifth Amendment guarantee of due process, was intended to preserve the citizen from damage to himself, his property and his civil rights caused by the arbitrary and capricious action of state officials clothed with the power of the state. As Mr. Justice Field stated for this Court in *Missouri Pacific Railway Company* v. *Humes,* 115 U.S. 512 (1885):

> In England the requirement of due process of law, in cases where life, liberty and property were affected, was originally designed to secure the subject against the arbitrary action of the Crown, and to place him under the protection of the law. The words were held to be the equivalent of "law of the land." And a similar purpose must be ascribed to them when applied to a legislative body in this country; that is, that they are intended, in addition to other guarantees of private rights, to give increased security against the arbitrary deprivation of life or liberty, and arbitrary spoilation (sic) of property. *Id.* at 519.

Accord: *Bank of Columbia* v. *Okely,* 4 Wheat. (17 U.S.) 235, 244 (1819); *U. S.* v. *Cruikshank,* 92 U.S. 542, 554 (1875). When governmental agencies violate a legal duty and thereby deprive a citizen of his property or civil rights, they violate due process. As the United States Court of Appeals for the Sixth Circuit recognized in *Weaver* v. *Pennsylvania-Ohio Power & Light Co.,* 10 F. 2d 759, 760 (6th Cir. 1926), the alleged collusion of government officials in an eminent domain proceeding would, if substantiated, be a violation of due process guaranteed by the Fourteenth Amendment. This is consistent with the holding in *Donovan* v. *Mobley,* 291 F. Supp. 930, 934, (C.D. Calif. 1968), *modified on other grounds,* 433 F. 2d 738 (9th Cir. 1970), where the Court rightly

held that although there may have been no compulsion on the state to establish a particular procedure, once established it could not be violated by governmental agencies or officers. Where the State of Illinois required that the Authority act in public and open meetings and the Respondents disregarded this law and acted in closed and secret meetings they acted arbitrarily and capriciously and violated due process guaranteed by the Fourteenth Amendment to the United States Constitution.

Third, Petitioners were denied due process on still another ground. Due process requires a proceeding following the ordinary mode prescribed by law, adapted to the end to be obtained, and held at an effective time. *Hagar* v. *Reclamation District No. 108*, 111 U.S. 701, 708 (1884). The time to protect the environment is before any damage is done to it. Money cannot replace it and no legal proceeding can undo destruction already completed. The State of Illinois mandated a proceeding which guaranteed that proper consideration would be given to the rights and property of Petitioners before potentially detrimental action was taken. All citizens who would be affected by environmental degradation and destruction were entitled to participate in this proceeding, whereas only land owners could be made parties to condemnation actions. Respondents' violation of the open meetings act deprived Petitioners of a timely, effective proceeding in compliance with law and thus violated their right to due process as guaranteed by the Fourteenth Amendment to the United States Constitution.

The Seventh Circuit cited as its basis for holding that no federal due process question was stated in Petitioners' Complaint a previous Seventh Circuit decision, namely

Green Street Association v. *Daley*, 373 F. 2d 1 (7th Cir. 1967). That case does not support the decision in the case at bar and remains clearly distinguishable from it. In that case and in *Harrison-Halsted Community Group, Inc.* v. *Housing & Home Finance Agency*, 310 F. 2d 99 (7th Cir. 1962), cited in the *Green Street* case, the Seventh Circuit held that there had been no violation of due process in a suit to enjoin state eminent domain proceedings for failure to hold public hearings as required by federal regulations under which federal funds were to be given to the state for a proposed state project. Had the federal funding itself been challenged instead of the state's power of eminent domain (which existed for the intended purpose regardless of whether or not federal funds were involved) the decision would undoubtedly have been different. This distinction was recognized by the United States District Court for the Eastern District of Pennsylvania in *Powelton Civic Home Owners Association* v. *Department of Housing and Urban Development*, 284 F. Supp. 809, 823-4 (E.D. Penn. 1968). The case at bar, contrary to *Green Street* and *Harrison-Halsted*, was brought to enjoin a state agency from exercising eminent domain in furtherance of an illegal project authorized in closed and secret meetings in disregard and violation of the state statutory requirement that decisions to undertake and fund public projects be made in mandatory open meetings. It was only after enactment of the Illinois Meetings of Public Agencies Act (App. 21-22), which became state law after the decision in the *Green Street* and *Harrison-Halsted* cases, that a public meeting became mandatory for all state agencies when making policy decisions to authorize construction or fund particular projects. This created an addi-

tional procedural step which must be followed if eminent domain is to be lawfully exercised. *Department of Public Works* v. *Ryan*, 357 Ill. 150, 155-6 (1934); *accord*: *Chicago, B. & Q. R.R. Co.* v. *Chicago*, 166 U.S. 226, 241 (1897). Because Respondents in the case at bar violated a limitation placed on the exercise of eminent domain, due process was violated. The Seventh Circuit should therefore have followed its own precedent in *Progress Development Group* v. *Mitchell*, 286 F. 2d 222 (7th Cir. 1961).

Furthermore, all parties in the *Green Street* and *Harrison-Halsted* cases would have been proper parties to condemnation proceedings since they were either owners or tenants of buildings and land sought to be taken, whereas in the case at bar many of the Petitioners, although sharing the same environment and breathing the same air, are not land owners or tenants and would not be proper parties to a condemnation proceeding. Moreover, neither decision was concerned with environmental rights which could not be properly protected in a condemnation proceeding. Both cases were decided prior to Congress' recognition of the right to a protected and healthful environment, 42 U.S.C. 4331(c) (App. 20) and recognized by the Illinois State Constitution of 1970, Article XI, §2. Since Congress' recognition of the right to a healthful and protected environment, the Fourteenth Amendment to the United States Constitution and 42 U.S.C. §1983 ensure that Petitioners' rights to a protected and healthful environment shall not be impaired or endangered by state governmental action without the observance of due process of law. Due process always expands to protect new rights as they are recognized. *Wolf* v. *Colorado*, 338 U.S. 25, 27 (1949); *accord*: *Holden* v. *Hardy*, 169 U.S. 366 (1898).

B.

The Court Of Appeals For The Seventh Circuit Contravened Repeated Holdings Of This Court That A Violation Of State Law Can Be Redressed In Federal Court Where The Federal Guarantee To Due Process Is Also Violated Thereby.

The United States Court of Appeals for the Seventh Circuit is further in direct conflict with the authority of this Court when it held: "Suffice it to say that this is a state statute, and if valid, might provide a cause of action in the state courts. It does not give rise to a cause of action cognizable by a federal court, . . . (App. 6a)."

In the 19th century this Court recognized that where the violation of state law also gave rise to a violation of due process under the federal constitution the Plaintiff had the right to choose whether he would proceed on his federal rights in a federal court or his state rights in a state court. *Smyth* v. *Ames,* 169 U.S. 466, 516 (1898). In this century, this Court has reiterated this principle repeatedly. *Mosher* v. *City of Phoenix,* 287 U.S. 29, 32 (1932). In the famous case of *Monroe* v. *Pape,* 365 U.S. 167, 183 (1960), reversing the Seventh Circuit, this Court held:

> It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked. Hence the fact that Illinois by its constitution and laws outlaws unreasonable searches and seizures is no barrier to the present suit in the federal court.

Even the Seventh Circuit has held on a previous occasion that where the exercise of eminent domain will

violate federal constitutional guarantees federal courts will enjoin the condemnation. *Progress Development Corp.* v. *Mitchell,* 286 F. 2d 222 (7th Cir. 1961). In the case at bar Petitioners' property and rights in the environment will be damaged or destroyed by the decision of the Authority to build this extension which was made in closed and secret meetings in contravention of law. The proceeding provided by law and denied to Petitioners by Respondents was the only proceeding authorized which was suited to the protection of the rights involved herein. The deprivation of this proceeding was clearly a deprivation of due process and thus a valid federal cause of action.

This Court should take certiorari and reverse the Seventh Circuit because that decision contravenes numerous decisions of this Court as well as constitutional and statutory provisions which guarantee to Petitioners due process of law. U.S. Const. XIV, §1; 42 U.S.C. §1983. Furthermore, the issue involved in this case is of great importance to the health and welfare of the nation. Historically, this court has enunciated decisions delineating basic principles governing the nature and scope of due process. These decisions clearly include within their scope the protection of Petitioners' environmental rights claimed in the circumstances of this case. This nation can ill afford any confusion which may be caused by failure to reverse the Seventh Circuit at this point in time when it is recognized that land and other environmental resources are not limitless, but indeed are dangerously close to depletion.

II.

THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT ERRED IN NOT ENFORCING PETITIONERS' RIGHTS TO A PROTECTED, ENHANCED AND HEALTHFUL ENVIRONMENT UNDER §4331(c) OF THE NATIONAL ENVIRONMENTAL POLICY ACT AND IN NOT ENFORCING RESPONDENTS' DUTIES TO PROTECT AND ENHANCE THE ENVIRONMENT UNDER §4331(a) AND (c) OF THE NATIONAL ENVIRONMENTAL POLICY ACT IN CONTRAVENTION OF THE PLAIN MEANING OF THOSE PROVISIONS

AND

THE COURT OF APPEALS FOR THE SEVENTH CIRCUIT BY NOT ENFORCING §4331(a) AND (c) OF THE NATIONAL ENVIRONMENTAL POLICY ACT DISREGARDED THE RULES ESTABLISHED BY THIS COURT FOR STATUTORY INTERPRETATION, NULLIFIED PROVISIONS OF AN ACT OF CONGRESS, IGNORED THE INTENT OF CONGRESS, AND PLACED ITSELF IN CONFLICT WITH DECISIONS OF THE FIRST, THIRD, SIXTH, TENTH, AND DISTRICT OF COLUMBIA CIRCUITS, THE DISTRICT COURT FOR NEW JERSEY, AND ITS OWN PRECEDENT.

Petitioners also sued to enjoin the construction of the proposed extension because Respondents violated the National Environmental Policy Act ("NEPA"), 42 U.S.C. §4331(c) (App. 20) and the Environmental Quality Improvement Act, 42 U.S.C. §4371(b)(1), (2) (App. 20). Rather than protecting and enhancing the environment by avoiding or minimizing damage, Respondents will in many ways maximize environmental damage (R. App. 4-9, 11-14). The United States Court of Appeals clearly erred in holding that because no federal money was involved Petitioners failed to state a cause of action (App. 5-6). In so ruling, the Court of Appeals violated the clear language of two Congressional enactments, ignored a long line of this Court's decisions on statutory inter-

pretation and legislative hisory, contravened its own precedent, lacked authority to support its decision, and conflicted with a decision of the United States District Court for New Jersey. This Court should be particularly interested in this decision and should take certiorari to examine it because the Court of Appeals used as its guideline a one-line comment made by one of the Justices of this Court in his dissent from a two-paragraph opinion denying certiorari, and the comment was not even remotely related to the subject-matter presently before this Court. This Court must ensure that this one-line excursion by one Justice of this Court does not mislead lower federal courts into believing that §4331(c) is now foreclosed to independent examination, thus predetermining for the nation the outcome of any future case based on this section. This Court now has the responsibility of examining the issue thoroughly, considering all the arguments, and making a definitive pronouncement.

The comment upon which the Court of Appeals relied was in Mr. Justice Douglas's dissent to the denial of Certiorari in *San Antonio Conservation Society* v. *Texas Highway Department,* 400 U.S. 968 (1970). That case concerned a federally funded highway which was to cut through a public park in San Antonio, Texas, and arose under a different provision of NEPA. In his dissent, Mr. Justice Douglas made the gratuitous personal observation that had the City of San Antonio or the State of Texas financed the highway with local funds, no federal question would be presented. Mr. Justice Douglas's quotation was as follows: "No federal question would, of course, be presented if Texas or San Antonio decided to turn these park lands into a biological desert." *Id.* at 978. Federal

funds, however, were involved in that case and it is clear that the issues raised in the case at bar were not raised, argued, elucidated or even before this Court for consideration. In passing, it should be noted that the Court of Appeals not only erred in regarding this comment as a guideline by this Court but erroneously considered a denial of Certiorari as an expression of approval by this Court of the lower court decision (App. 5).

It is important to note that although the Petitioners rested their claim under the National Environmental Policy Act (NEPA), 42 U.S.C. §4331(c) (App. 20), the Court of Appeals, although claiming to set out the pertinent parts of NEPA, in fact set out subsection (a) and the first part of sub-section (b) and completely ignored the main basis of Petitioners' claim, namely subsection (c) (App. 3). Similarly, the Court of Appeals relied on decisions of other circuits interpreting subsection (b) but not one decision cited by the court dealt with subsection (c) which is distinct in its wording and different in its thrust from (b).

The Court of Appeals relied upon two cases in addition to the dissenting opinion and the wrong section of NEPA. The first decision relied upon was *McQueary* v. *Laird*, 449 F. 2d 608 (10th Cir. 1971), concerning chemical and biological warfare agents stored in the Rocky Mountain Arsenal. The court in that case, however, never had the opportunity to consider the questions raised in this case for three reasons. First, the federal government was involved and sub-section (c) was therefore not even under consideration. Second, the court could not give much consideration to any part of NEPA because: "During oral argument the appellants for the first time indicated

that jurisdiction might vest by virtue of the National Environmental Policy Act of 1969." 3 E.R.C. 1184, 1185. Third and most important, the court's decision turned on a specialized and unique aspect of federal law regarding military disclosures: "In its proprietary military capacity, the Federal Government has traditionally exercised unfettered control with respect to internal management and operation of federal military establishments. . . ." *Id.* at 1187.

The second case relied upon by the Court of Appeals was *Environmental Defense Fund* v. *Corps of Engineers of the United States Army*, 325 F. Supp. 749 (E.D. Ark. 1971). Again the federal government was involved and again the court never considered sub-section (c). At the time Congress established the national policy, in other sections of the Act, as controller of federal operations, it also established procedures for the federal government to bring it into compliance with the policy set forth in NEPA. The federal government did not fulfill its obligations as defined by Congress and the government was enjoined at Plaintiff's request.

NEPA begins with a statement of purpose, 42 U.S.C. §4321 (App. 18). In the next section it makes a "Congressional declaration of environmental policy", 42 U.S.C. §4331 (App. 18), which is divided into three parts. The first part is directed to state and local governments and public and private organizations; the second part is addressed to the federal government; and the third part is addressed to individuals, 42 U.S.C. §4331(a), (b), (c). This declaration of a national environmental policy follows a statement of purpose and was meant to effectuate that purpose. To deny meaning and effect to sub-sections

(a) and (c) is to violate the well settled and often repeated holding of this Court that "a statute ought, upon the whole, to be so construed that, if it can be prevented, no clause, sentence, or word shall be superfluous, void, or insignificant." *Ex Parte Public Bank*, 278 U.S. 101, 104 (1928); *U.S.* v. *Fisher*, 109 U.S. 143, 145 (1883); *Montclair* v. *Ramsdell*, 107 U.S. 147, 152 (1882). Congress enacted a statute, not a resolution, and put this section and its subsections squarely within Title I. The Court of Appeals therefore held that Congress enacted meaningless surplusage as one section of Title I, and that in the midst of drafting a statute, threw in a lengthy section never intending it to become law or to have effect.

It is a long standing rule of statutory construction that acts *in pari materia* should be consulted where there is doubt as to meaning. The Environmental Quality Improvement Act, 42 U.S.C. §4371, enacted only a short time after NEPA and declaring once again the same national policy for the environment, states unequivocally:

> (b)(1) The Congress declares that there is a national policy for the environment which provides for the enhancement of environmental quality. * * *
>
> (2) The primary responsibility for implementing this policy rests with State and local governments. 42 U.S.C. §4371(b)(1)(2) (App. 20).

If there was any question whether sub-section (a) of NEPA put a duty on state and local government, that doubt is completely removed by the Environmental Quality Improvement Act.

This Court has often held that a statute should be given effect according to its literal language. *Van Camp & Sons* v. *American Can Co.*, 278 U.S. 245, 253 (1928);

accord: *Hilliard* v. *U.S.*, 310 F. 2d 631, 632 (6th Cir. 1962). Sub-section (c) provides:

> (c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment. 42 U.S.C. §4331(c) (App. 20).

The word "should" has repeatedly been interpreted and defined as a word of command. "Should" is mandatory. *Town of Edgewater* v. *Liebhardt*, 32 Colo. 307, 76 P. 366 (1904); *Fegan* v. *Lykes Bros. S.S. Co.*, 198 La. 312, 3 So. 2d 632 (1941); *State* v. *Bruton*, 383 S.W. 2d 525 (Mo. Sup. Ct. 1964); *Williams* v. *Kaestner*, 332 S.W. 2d 21, 27 (Mo. Ct. App. 1960). Furthermore, Congress not only recognized the right, it also spelled out its corollary, its corresponding duty. The word "responsibility" is defined by the Seventh Circuit as well as other courts as meaning "obligation" or "duty". *Niagara Fire Extinguisher Co.* v. *Hibbard*, 179 Fed. 844, 848 (7th Cir. 1910); *The Mary Barrett*, 279 Fed. 329, 334 (3rd Cir. 1922); *Murphy* v. *Chicago League Ball Club*, 221 Ill. App. 120, 126-7 (1921); *Bouvier's Law Dictionary Unabridged* (8th ed.). These words must be taken as meaning in the statute what they are commonly understood to mean. *Henry* v. *U.S.*, 251 U.S. 393, 395 (1919) (Justice Holmes speaking for the Court); *Montclair* v. *Ramsdell*, 107 U.S. 147, 152 (1882). The Seventh Circuit, however, neither read nor enforced this sub-section of the Act according to its plain language, but sought to nullify the words and thus contravened other decisions of this Court. *Carter's Heirs* v. *Cutting & Wife*, 12 U.S. (8 Cran.) 251, 252 (1814); *Van Camp & Sons Co.* v. *American Can Co.*, 278 U.S. 245, 253 (1928).

The Court of Appeals further disregarded the statute's history which clearly demonstrates that Congress intended to create a right. The report of the Senate Conference Committee reporting the final draft of the legislation to the floor of the Senate leaves no question that a right was intended:

> Section 101(c).
>
> This subsection asserts congressional recognition that each person should enjoy a healthful environment. It is apparent that the guarantee of the continued enjoyment of any individual right is dependent upon individual health and safety. It is further apparent that deprivation of an individual's healthful environment will result in the deprivation of all of his rights.
>
> The subsection also asserts congressional recognition of each individual's responsibility to contribute to the preservation and enhancement of the environment. The enjoyment of individual rights requires respect and protection of the rights of others. The cumulative influence of each individual upon the environment is of such great significance that every effort to preserve environmental quality must depend upon the strong support and participation of the public. Cong. Rec., December 20, 1969, p. 40419.

It also disregarded the statutory history of the Environmental Quality Improvement Act, 42 U.S.C. §4371 (App. 20) which is a complementary act *in para materia* declaring once again the same national policy for the environment. In its committee report the Senate Committee for Interior and Insular Affairs, under the heading "Title II, Environmental Quality Summary and Discussion of Major Provisions" referring to §4371(b) (1) and (2), stated:

> The States have been delegated the primary responsibility to protect and enhance the quality of air and water within their boundaries, and, in cooperation with other States, to protect and enhance the quality or air and water within resource areas common to those States. Senate Report 91-351, 91st Cong., 1st Sess. 37 (1969).

The Court erred in disregarding these clear indications of legislative intent.

The Court of Appeals violated the precedent and authority of this Court in not enforcing this statute as law. First, it violated all the well established rules of statutory interpretation. Second, it never analyzed the Act nor so much as mentioned the canons of interpretation commanded by this Court. Third, it nullified an Act of Congress by refusing to enforce the duties established therein or the policy which Congress declared for the nation. The Seventh Circuit cannot nullify the policy established by the policy-making branch of the federal government. It is bound to enforce that policy as any other law. *Moragne* v. *States Marine Lines,* 398 U.S. 375, 390-1 (1970); *Van Beeck* v. *Sabine Towing Co. Inc.,* 300 U.S. 342, 351 (1937) (Justice Cardozo speaking for the Court); *Johnson* v. *U.S.,* 163 Fed. 30, 32 (1st Cir. 1908) (Justice Holmes speaking for the Court); *Tag* v. *Rogers,* 267 F. 2d 664, 668 (D.C. Cir. 1959). The Congress realized that setting policy on environmental matters merely for the federal government would accomplish little if state and local governments as well as individuals were free to disregard it. Congress bound the nation by declaring a national policy which put obligations on all levels and parts of society.

The United States District Court for New Jersey recognized that the policy enunciated by Congress was a mandate to be enforced against all who violate it. In *Izaac Walton League* v. *Macchia*, 2 E.R.C. 1661 (D.N.J. 1971), the court recognized that NEPA extended beyond the federal government, and applied it to state officers who permitted a dredge and fill operation which endangered the environment. The court also recognized that NEPA applied to and was binding on the private individuals actually performing the dredge and fill operation as part of their private building development. In granting an injunction against the private developers working on their own private building venture for their own profit, the court held, "Our environment must be protected against abuse, *either public or private*. That is the mandate of Congress." *Id.* at 1669.

Respondents herein, whether as persons or the Illinois State Toll Highway Authority, breached their statutory duty and Petitioner's rights by not weighing or considering the environment to avert damage thereto.

That environmental damage would be caused by the proposed project in a unique area cannot be questioned. The area has some of the richest soil in the nation in combination with a climate well suited to agriculture and the most stable in the nation, and a high water table (R. App. 4). Because of the high water table the area is resistant to drought (R. App. 11) but without the aid of drainage tiles and the natural run-off patterns there would be erosion and the land would become untillable marsh (R. App. 4, 6) where mosquitoes and other pests would breed (R. App. 10). Respondents under NEPA have an obligation to protect and enhance Petitioners'

environment. However, the Respondents have taken no care to preserve the present drainage system. Although they commissioned an engineering report, they considered no drainage except for water which falls on the pavement to be shunted to the surrounding land, and as Petitioners alleged below, "said Defendants have not made and have no intention of making exploratory surveys to locate and preserve the crucial water drainage tiles and no drainage system is planned for the tollway to prevent the disruption by the Tollway of existing run-off patterns" (R. App. 6).

Air pollution, detrimental to the health of humans and animals and which will reduce the quality and quantity of crop yields will be caused as a natural result of the proposed extension (R. App. 4, 5, 7, 12). Petitioners alleged in the Complaint below:

> 16. The said report on traffic and revenue candidly sets forth the conclusions that most of the long distance traffic that would have been served by this proposed extension of the East-West Tollway is now served by the recently constructed Interstate 80, which is a new free limited-access multi-lane interstate highway, and that the traffic which can be expected to use the said proposed extension will be short distance local commuter traffic *and traffic which the construction of the highway will itself create and generate.* (Emphasis Added)

This is an extremely important allegation because it not only sets forth that the extension itself is unnecessary, as shown by the Authority's own traffic and revenue report, but that much of the pollution will be created by

the construction of the extension. Most of the anticipated traffic would not exist on any highway at any time but for the construction of the extension; this traffic is officially called "generated traffic." The emissions from the large amount of generated traffic are not only needless but also detrimental to the environment (R. App. 4). Furthermore, the construction of this unnecessary tollway is expected and planned to stimulate industrial development along the route, which in turn is expected to create more traffic for the toll highway extension (R. App. 7). The emissions from both the industrial sources and the traffic is unnecessary and degrading to the environment.

Furthermore, not only are large numbers of acres in danger of becoming untillable marsh because of drainage disruption, but the planned route of the road will maximize the number of acres taken out of production because the route is not a straight route paralleling section lines, but is a diagonal curve (trapezoidal route) using 2,565 acres for the extension, isolating 1,102 acres and severing 3,361 acres (R. App. 7). In addition the Respondents are depending on industrial development along the extension, stimulated by the extension (R. App. 7). The diagonal route will require more acreage for the extension itself and cause more isolation (R. App. 7). Many local roads will be closed, limiting access to various social and emergency services (R. App. 13).

The Respondents are destroying the environment and ecology of the area in violation of Petitioners' rights and their obligations under NEPA and under the Environmental Quality Improvement Act, and should be enjoined until they can prove that the social cost is less than the social gain and that they have taken care to minimize

environmental and ecological degradation and destruction. *Steele* v. *L. & N.R. Co.*, 323 U.S. 192, 207 (1944).

The importance of this issue for the nation as a whole is overwhelming. Our environment is in danger of being exhausted irreparably. Congress recognized this and sought to protect and enhance the environment by putting obligations on all levels of society—federal, state and local governments, and individuals. Congress was mindful that in order to preserve natural resources the obligation to do so must be on all, since it is state and local actions as well as individual actions which have the greatest impact on the environment. The Courts must enforce the express language of Congress and the obligations and rights therein set forth. The Seventh Circuit Court of Appeals failed to enforce an Act of Congress against the clear intent and meaning of the words, against the demonstrated legislative history, against the authority of this Court, and the conflict with other Circuit and District courts. This court should hear this case and clarify for the lower federal courts whether the gratuitous statement of Justice Douglas is the holding of this Court. This Court must vindicate its past decisions and its authority over the Circuit Courts, resolve the conflict of the Seventh Circuit with the other Circuit and District courts, and clarify and define this Court's position on the issue so that lower federal courts will not be led astray.

CONCLUSION.

In view of the foregoing, we respectfully submit that the Court of Appeals opinion below is in conflict with the rulings of this Court, other Circuit Courts, Federal Statutes and Constitutional provisions on important questions of federal law; that the recently recognized federal environmental rights and duties involved herein need further definition and clarification by this Court; that the effect of the decision is to cause confusion and uncertainty in the law with the resulting loss of substantial justice to citizens of the United States and will increase rather than decrease litigation in the United States courts of review unless the supervision and correcting authority of this Court is brought into use by granting the Writ of Certiorari.

Petitioners pray that the Writ of Certiorari to the United States Court of Appeals for the Seventh Circuit be allowed in this case and that on such review by this Court the judgment of the United States Court of Appeals for the Seventh Circuit be reversed in its entirety or reversed and remanded with appropriate directions.

Respectfully submitted,

DAVID LINCOLN ADER, Esq
233 East Walton Place
Chicago, Illinois 60611
312-337-6285 or 312-726-4904

Attorney for Petitioners

APPENDIX A

In the
United States Court of Appeals
For the Seventh Circuit

SEPTEMBER TERM, 1971 — APRIL SESSION, 1972

No. 71-1488
BRADFORD TOWNSHIP, et al.,
Plaintiffs-Appellants,
v.
ILLINOIS STATE TOLL HIGHWAY AUTHORITY, et al.,
Defendants-Appellees.

Appeal from the United States District Court for the Northern District of Illinois, Eastern Division.
No. 71-C-1270
FRANK J. McGARR, *Judge.*

ARGUED APRIL 20, 1972 — DECIDED JUNE 22, 1972

Before SWYGERT, *Chief Judge*, PELL, *Circuit Judge*, and JUERGENS*, *District Judge.*

JUERGENS, *District Judge.* This is an appeal from an order of the United States District Court for the Northern District of Illinois, Eastern Division, dismissing plaintiffs' complaint for failure to state a cause of action.

* Chief District Judge William G. Juergens of the Eastern District of Illinois is sitting by designation.

This action is to enjoin the defendants, the Illinois State Toll Highway Authority, from constructing the proposed extension to the East-West Toll Highway from Aurora, Illinois, to Rock Falls, Illinois.

Plaintiffs allege that the extension of the highway will greatly damage the environment in that it will cause the closing of many roads and limit access to various social and emergency services, cause pollution of the air by virtue of gas exhaustion, disruption of vital water drainage systems and patterns, and will destroy important acreage along the route it traverses, which land is exceptionally prolific farm property, very high in quality for farming purposes because of its fertility and its drought resistance.

It is alleged that the lands were previously swamp lands, which have been drained through the use of tile, and that the proposed construction of the tollway makes no provision for maintaining the drainage facilities.

Jurisdiction is alleged to exist under the provisions of the National Environmental Policy Act, 42 U.S.C. § 4321 and § 4331; the Environmental Quality Improvement Act, 42 U.S.C. § 4371; Meeting of Public Agencies Act, Chapter 102 Ill. Rev. Stat. § 42; the Civil Rights Act, Title 42 U.S.C. § 1983.

Section 4321 declares the purpose by stating:

> "Sec. 2. The purposes of this Act are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; to enrich the understanding of the ecological systems and natural resources important to the Nation; and to establish a Council on Environmental Quality."

Section 4331 is in pertinent parts as follows:

"(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and local governments, and other concerned public and private organizations, to use all practical means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

"(b) In order to carry out the policy set forth in this Act, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of nation policy, to improve and coordinate Federal plans, functions, programs, and resources * * *."

The Environmental Quality Improvement Act, 42 U.S.C. § 4371. provides:

"§ 4371. Congressional findings, declarations, and purposes.

(a) The Congress finds—

(1) that man has caused changes in the environment;

(2) that many of these changes may affect the relationship between man and his environment; and

(3) that population increases and urban concentration contribute directly to pollution and degradation of our environment.

(b)(1) The Congress declares that there is a national policy for the environment which provides for the enhancement of environmental quality. • • •

(2) The primary responsibility for implementing this policy rests with State and local governments."

Plaintiffs-appellants argue that the district court dismissed the cause for lack of jurisdiction without any consideration of the various federal claims alleged. The district court's opinion elicits that it took jurisdiction because a federal cause of action was alleged in the complaint. The court, after considering the claims alleged, dismissed the complaint for lack of jurisdiction over the subject matter.

The question of whether or not the National Environmental Policy Act (NEPA) creates a substantive right was dealt with in *Environmental Defense Fund* v. *Corps of Engineers of the United States Army*, 325 F.Supp. 749, which held that NEPA was merely a statement of policy and created no substantive rights giving a right to the enjoining of a dam project in that area. The court further held that the plaintiffs were relegated to the procedural requirements under § 102 of NEPA which required the governmental agency to file a "detailed impact" statement.

In *McQueary* v. *Laird*, 449 F.2d 608 (10 Cir. 1971), various residents of Colorado sought to enjoin the storing of chemicals and biological warfare agents at Rocky Mountain Arsenal. The court held NEPA does not create substantive rights in the plaintiffs to raise the environmental challenge in the Rocky Mountain Arsenal.

Federal agencies are clearly charged with certain procedural requirements under NEPA and failure to comply

therewith is basis for an injunction. One of the requirements is that an impact statement must be filed showing the impact on the environment by virtue of the proposed agency action.

Judicial relief is available to correct failure on the part of a federal agency to follow the procedural requirement under NEPA.

A question somewhat comparable to that presented here was presented to the Supreme Court in *San Antonio Conservation Society of Texas* v. *Texas Highway Department*, 91 S.Ct. 368, 400 U.S. 968. This case involved the construction of a federally funded highway through a San Antonio, Texas park. The court originally granted a stay, later dissolved the stay and denied certiorari. Justice Douglas dissented, arguing that major federal action was involved and federal jurisdiction existed because an environmental impact statement had not been prepared by the U. S. Department of Transportation. Thus, in the factual situation presented here, it would appear that even Justice Douglas would hold that the Act is not applicable, since we are here dealing with independent state or local governmental actions.

The Environmental Quality Improvement Act (EQIA), 42 U.S.C. § 4371, is clearly limited in its application to agencies of the federal government. The Act provides, inter alia, that each federal department and agency conducting or supporting public work activities, which affect the environment, shall implement the policies established under existing law. The Act authorized an Office of Environmental Quality which was to provide provisional and administrative staff for the Counsel on Environmental Quality. Nowhere does the Act purport to give a cause of action against state agencies or officers as plaintiffs contend.

There is no claim that the federal government or any federal agency is engaged in any manner in the construc-

tion of the tollway extension. Nor is it alleged that any federal funds are to be used. Since the procedural requirements of the National Environmental Policy Act are applicable only to federal agencies, it is patently clear that these requirements have no pertinence to the facts of this case. Other than the procedural requirements just mentioned, no judicially enforceable duties are created by either the National Environmental Policy Act or the Environmental Quality Improvement Act. The declarations of a national environmental policy and a statement of purpose appearing in these acts are not sufficient to establish substantive rights. For these reasons, the plaintiffs have asserted no cognizable federal rights under these statutes.

Plaintiffs-appellants allege that no public hearings were held as required by the Illinois Meetings of Public Agencies Act. Suffice it to say that this is a state statute and, if valid, might provide a cause of action in the state courts. It does not give rise to a cause of action cognizable by a federal court, nor does a failure to follow the requirements of the Act constitute a violation of a federally protected constitutional right. See *Green Street Association* v. *Daley*, 373 F.2d 1 (1967).

The allegations of the complaint are totally insufficient to state a cause of action under the Civil Rights Act.

The District Court properly dismissed the complaint for failure to state a claim upon which relief could be granted.

The order of the District Court, dismissing the complaint, is affirmed.

AFFIRMED.

A true Copy:
Teste:

Clerk of the United States Court of Appeals for the Seventh Circuit.

APPENDIX B

OPINION BY JUDGE JUERGENS

In the

United States Court of Appeals

For the Seventh Circuit

June 22, 1972

Before

Hon. LUTHER M. SWYGERT, *Chief Judge*
Hon. WILBUR F. PELL, JR., *Circuit Judge*
Hon. WILLIAM G. JUERGENS, *Chief District Judge*

Cause No. 71-1488

BRADFORD TOWNSHIP, *et al.*,

Plaintiffs-Appellants,

vs.

ILLINOIS STATE TOLL HIGHWAY AUTHORITY, *et al.*,

Defendants-Appellees.

This cause came on to be heard upon the transcript of the record from the United States District Court for the Northern District of Illinois, Eastern Division, and was argued by counsel.

On consideration whereof, it is ordered and adjudged by this court that the order of the said District Court dismissing the complaint in this cause appealed from be, and the same is hereby, Affirmed, with costs, in accordance with the opinion of this Court filed this day.

APPENDIX C

In the
United States Court of Appeals
For the Seventh Circuit

I, Kenneth J. Carrick, Clerk of the United States Court of Appeals for the Seventh Circuit, do hereby certify that the foregoing ..... pages contain a true copy of

1. Appellants' appendix filed November 1, 1971.
2. Opinion Filed June 22, 1972.
3. Judgment Entered June 22, 1972.

Cause No. 71-1488

BRADFORD TOWNSHIP, *et al.*,

Plaintiffs-Appellants,

vs.

ILLINOIS STATE TOLL HIGHWAY AUTHORITY, *et al.*,

Defendants-Appellees.

as the same remains upon the files and records of the United States Court of Appeals for the Seventh Circuit.

In Testimony Whereof I hereunto subscribe my name and affix the seal of said United States Court of Appeals for the Seventh Circuit, at the City of Chicago, this 15th day of September A. D. 1972.

/s/ William H. Pittman
Deputy Clerk of the United Court of Appeals for the Seventh Circuit

APPENDIX D

1 EXCERPT OF PROCEEDINGS

had in the above-entitled cause before the Honorable Frank J. McGarr, one of the Judges of said court, in his courtroom in the United States Courthouse, Chicago, Illinois, on Friday, June 25, 1971, at 2:00 o'clock p.m.

Present:

Mr. David Lincoln Ader
(175 East Delaware Place, Suite 5407, Chicago, Illinois)
appeared on behalf of plaintiffs;

William J. Scott,
Attorney General, State of Illinois
(160 North LaSalle Street, Chicago, Illinois) by
Mr. John Lavery and
Mr. Walter K. Pyle,
Assistant Attorneys General, and
Mr. Frank S. Righeimer, Jr.,
Special Assistant Attorney General,
appeared on behalf of defendants.

• • • • •

2 The Court: Gentlemen, I have had the opportunity to read these briefs, which I might say are thorough and well done. Counsel's leave granted to amend them slightly has not in any way caused me to re-read them, because it was the correction of minor errors that didn't cause me any inconvenience in the first place. And I have listened to an excellent argu-

ment on both sides, and because I have had this opportunity to read the briefs and to do some research of my own, and read some of your cases, despite the importance of the question, I think I am prepared to rule at this time.

First, to be absolutely clear as to the posture of the matter before me, I do not, and have not refused jurisdiction in this case. Your presence here today arguing, I am sure, establishes that. But having taken jurisdiction because a federal cause of action has been alleged in the complaint, I have before me now a motion to dismiss, principally on the ground, to state it in summary form, that the complaint fails to state a claim upon which the Court can grant relief and the Court lacks jurisdiction over the subject matter.

First, some general comments that are suggested
3 to me by the argument made. Counsel, Mr. Ader, very ably argued and raised the question, "What is progress?" Not all building, and splashing of concrete around the countryside, is necessarily progress, and of course, more particularly whether a toll road extension, in this case, is or is not progress is debatable. And whether it should or should not be built, I am sure is subject to a lot of pros and cons, and to a genuine difference of opinion on the part of a lot of well-intentioned people. But I don't have to get to that. The issue here is whether this court is the proper forum for that debate, and that is the only issue that I address myself to.

Absent two issues, that is, the Federal Environmental Protection legislation, and the open meeting issue, there would otherwise than those issues, not be

the slightest basis for Federal Court intervention into a toll road extension, which is a purely State concern. Absent the allegations of those two issues, I think I would have dismissed this case on my own motion after a reading of the complaint, and I focus, therefore, on those two issues as the only real reason why I have any genuine concern as to whether we have a cause of action here that should or should not be dismissed.

Absent those two issues again, and looking at this case from the traditional point of view, I think we start with the assumption that Illinois has an inherent sovereign power to condemn, and in the traditional view, the damages done thereby are compensable in the State Courts. And in the traditional view of condemnation for the building of roads or any other sovereign function, no irreparable injury is shown from the exercise of this power because of the ability to utilize the State Courts to obtain recompense for the taking. But as I said, we have two issues in the case that raise, at least the specter of constitutional issues, and they have to be carefully considered.

Turning to the first of these, the open meetings issue, the complaint is somewhat vague on the violation, or the alleged violation of the Illinois statute. It states, as I recall, that there were four secret meetings. I have an indication from somewhere in the record, whether an argument made when the case was up earlier, or made today, or contained somewhere in the briefs—that there were some public meetings concerning the construction of the toll road, and the route it would take, or the area through which it

would go. But on reflection I don't believe that I would really have to get into that in the context of this motion.

The allegation that the Illinois Open Meetings Act was not complied with, does not rise to the dignity of a due process allegation sufficient to undergird Federal jurisdiction to enjoin the State in the exercise of a vital and uniquely local function. I know of no case indicating—and I have had none called to my attention—indicating that public hearings on highway construction proposals are a requirement dictated by constitutional due process. In addition, referring to your argument, Mr. Ader, it is easy, it is appealing, and sensible to say, that individuals have a property right in the environment which invokes due process every time the environment is disturbed, even by the sovereign. But I don't find that the Constitution says that, nor do I find that Congress in the Acts which you have called to my attention has said so. And if Congress ever does precisely say so in some way other than the broad statements of policy that I now have before me, Congress had also better say that they are appropriating enough money to build another courthouse and appoint 25 new judges, since we will be creating almost a universally applicable individual Federal cause of action. So the due process argument does not create, in my mind, the basis for Federal jurisdiction here.

A much more serious concern, however, is the environmental legislation, which you called to my attention. And it is your view, and you very ably argued it, that this environmental legislation has created a new right in individuals which has the stature of a

civil or constitutional right, and is therefore cognizable in the Federal Courts as civil and constitutional rights are, by virtue of the Constitution or other Federal legislation.

As I read, however, the Environmental Protection Act, if that is the correct name of it; the various pieces of environmental legislation that you have referred me to, I see Congress expressing its very real environmental concerns by appropriating some money and creating an agency and expressing a policy. And this policy seems to be that Congress is committing the Federal Government, and directing all of its executive branches to a recognition in furtherance of the policy expressed, that is, the preservation and conservation of the environment, and is directing all Federal executive agencies to cooperate with the State Government, and is directing all individuals to attend to their appropriate concerns and responsibilities in this matter. But it never ceases to be a statement of policy. And this is not enough to create Federal jurisdiction. The statutes concerned must reveal a Congressional intent to create, not a policy, but a right, and a remedy, and more, a remedy the enforcement of which is clearly entrusted to the Federal Court. The environmental legislation relied upon in support of Federal jurisdiction here does not charge the Federal Courts precisely, or directly with responsibility for generally policing the States to prevent environmental damage, and it does not, as I read it, create rights in individuals to invoke Federal jurisdiction, nor does it empower the Federal Courts to fashion remedies to prevent environmental damage.

With that view of the statutes, I have to, once again, consider the extraordinary nature of the relief you are seeking here. There is a traditional reluctance on the part of the Federal authority to intervene in
8 the affairs of a State. I am being asked here to enjoin a State agency from extending a toll road. As I said, an extraordinary relief. The State of Illinois, in the person of its Legislature and the Governor and the appropriate agencies, have given consideration, I am sure, under their responsibility of office, to the needs of the citizenry of the State, and have balanced the good against the bad in this matter and decided, apparently, to extend the toll road. I am being asked to substitute my judgment for theirs in a matter which I think is uniquely a local concern, without even an allegation, as I gather the facts to be, of Federal funds in this construction.

I do not believe that I have been shown the jurisdictional authority to do what you have asked me to do. I want to commend you, Mr. Ader, on your excellent and most lawyer-like job of skillfully constructing an aura of Federal right from what I regard as the most meager Congressional indications. I have a great deal of sympathy for your environmental concerns. Despite that, however, I haven't been convinced, and the motion of the several defendants to dismiss is granted.

9 I think that is all we need to do today, gentlemen.

(Which were all the proceedings had in the above-entitled cause on the day and date aforesaid.)

10 Certificate of Court Reporter.

APPENDIX E

Title 28, United States Code, Judiciary and Judicial Procedure.

Vol. 7, p. 7431, Ch. 3—Courts of Appeals

§ 46. *Assignment of judges; divisions; hearings; quorum.*

(a) Circuit judges shall sit on the court and its divisions in such order and at such times as the court directs.

(b) In each circuit the court may authorize the hearing and determination of cases and controversies by separate divisions, each consisting of three judges. Such divisions shall sit at the times and places and hear the cases and controversies assigned as the court directs.

(d) A majority of the number of judges authorized to constitute a court or division thereof, as provided in paragraph (c), shall constitute a quorum. (June 25, 1948, ch. 646, 62 Stat. 871; Nov. 13, 1963, Pub. L. 88-176, § 1(b), 77 Stat. 331.)

Vol. 7, p. 7562, Ch. 83—Courts of Appeals

§ 1291. *Final decisions of district courts.*

The courts of appeals shall have jurisdiction of appeals from all final decisions of the district courts of the United States.

Vol. 7, p. 7560, Ch. 81—Supreme Court

Sec. 1254. Courts of appeals; certiorari; appeal; certified questions.

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

Vol. 7, p. 7636, Ch. 133—Review—Miscellaneous Provisions

Sec. 2101. Supreme Court; time for appeal or certiorari; docketing; stay.

(c) Any other appeal or any writ of certiorari intended to bring any judgment or decree in a civil action, suit or proceeding before the Supreme Court for review shall be taken or applied for within ninety days after the entry of such judgment or decree. A justice of the Supreme Court, for good cause shown, may extend the time for applying for a writ of certiorari for a period not exceeding sixty days.

Vol. 7, p. 7702, Rule 4—Appeal as of Right—When Taken

(a) *Appeals in Civil Cases.*

In a civil case (including a civil action which involves an admiralty or maritime claim and a proceeding in bankruptcy or a controversy arising therein) in which an appeal is permitted by law as of right from a district court to a court of appeals the notice of appeal required by Rule 3 shall be filed with the clerk of the district court within 30 days of the date of entry of the judgment or order appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of such entry. If a timely notice of

appeal is filed by a party, any other party may file a notice of appeal within 14 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this subdivision, whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to all parties by a timely motion filed in the district court by any party pursuant to the Federal Rules of Civil Procedure hereafter enumerated in this sentence, and the full time for appeal fixed by this subdivision commences to run and is to be computed from the entry of any of the following orders made upon a timely motion under such rules: (1) granting or denying a motion for judgment under Rule 50(b); (2) granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) denying a motion for a new trial under Rule 59. A judgment or order is entered within the meaning of this subdivision when it is entered in the civil docket.

Vol. 7, p. 7566, Ch. 85—§1331(a)—Federal Question Jurisdiction

The districts courts shall have original jurisdiction of all civil actions wherein the matter in controversy . . . arises under the Constitution, laws, or treaties of the United States.

Vol. 7, p. 7571, Ch. 85—§1343(4)—Civil Rights Jurisdiction

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person: (4) To recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil rights, . . .

Vol. 9, p. 10657, Ch. 55—National Environmental Act, 42 U.S.C. §4321

Congressional declaration of purpose.

The purposes of this chapter are: To declare a national policy which will encourage productive and enjoyable harmony between man and his environment; to promote efforts which will prevent or eliminate damage to the environment and biosphere and stimulate the health and welfare of man; . . .

Title 42, United States Code, Public Health and Welfare Vol. 9, p. 10665, Ch. 55, Sub-Ch. I—§4331(a)(b)(c)

§ 4331. Congressional declaration of national environmental policy.

(a) The Congress, recognizing the profound impact of man's activity on the interrelations of all components of the natural environment, particularly the profound influences of population growth, high-density urbanization, industrial expansion, resource exploitation, and new and expanding technological advances and recognizing further the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man, declares that it is the continuing policy of the Federal Government, in cooperation with State and

local governments, and other concerned public and private organizations, to use all practicable means and measures, including financial and technical assistance, in a manner calculated to foster and promote the general welfare, to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans.

(b) In order to carry out the policy set forth in this chapter, it is the continuing responsibility of the Federal Government to use all practicable means, consistent with other essential considerations of national policy, to improve and coordinate Federal plans, functions, programs, and resources to the end that the Nation may—

(1) fulfill the responsibilities of each generation as trustee of the environment for succeeding generations;

(2) assure for all Americans safe, healthful, productive, and esthetically and culturally pleasing surroundings;

(3) attain the widest range of beneficial uses of the environment without degradation, risk to health or safety, or other undesirable and unintended consequences;

(4) preserve important historic, cultural, and natural aspects of our national heritage, and maintain, wherever possible, an environment which supports diversity and variety of individual choice;

(5) achieve a balance between population and resource use which will permit high standards of

living and a wide sharing of life's amenities; and

(6) enhance the quality of renewable resources and approach the maximum attainable recycling of depletable resources.

(c) The Congress recognizes that each person should enjoy a healthful environment and that each person has a responsibility to contribute to the preservation and enhancement of the environment.

Vol. 9, p. 10669, Ch. 56—§4371 (b)(1)(2)

(b)(1) The Congress declares that there is a national policy for the environment which provides for the enhancement of environmental quality. • • •

(2) The primary responsibility for implementing this policy rests with State and local governments.

Title 42, United States Code, Public Health and Welfare
Vol. 9, p. 10283, Ch. 21, Sub-Ch. I—§1983

Civil action for deprivation of rights.

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Fourteenth Amendment, United States Constitution, §1

[N]or shall any State deprive any person of life, liberty, or property, without due process of law. . . .

Article XI, Illinois State Constitution of 1970

Section 2. Rights of Individuals

Each person has the right to a healthful environment. Each person may enforce this right against any party, governmental or private, through appropriate legal proceedings subject to reasonable limitation and regulation as the General Assembly may provide by law. [The second sentence of Section 2 of Article XI shall become effective on January 1, 1972. See Transition Schedule Section 1(d).]

Ch. 102, Illinois Revised Statutes—Officers

Vol. 2, p. 1558, ch. 102—§42—Meetings of Public Agencies

42. All official meetings open to the public—Exceptions.]

§ 2. All meetings of any legislative, executive, administrative or advisory bodies of the State, counties, townships, cities, villages, incorporated towns, school districts and all other municipal corporations, boards, bureaus, committees or commissions of this State, and any subsidiary bodies of any of the foregoing including but not limited to committees and subcommittees which are supported in whole or in part by tax revenue, or which expend tax revenue, shall be public meetings except for (a) personnel or collective negotiating matters between public employers and their employees or representatives as to employment, (b) deliberations for decisions of the Illinois Commerce Commission, the Illinois Parole and Pardon Board and the Illinois Youth Commission or its successor agency, (c) executive sessions of the Illinois Crime Investigating Commission where investi-

gations are to be discussed, (d) meetings where the acquisition of real property is being considered, or where a pending court proceeding against or on behalf of the particular governmental unit is being considered, but no other portion of such meetings may be closed to the public, (e) grand and petit jury sessions and (f) where the constitution provides that a governmental unit can hold secret meetings. This Act does not apply to the General Assembly or to committees or commissions thereof.

This Section does not prevent any body covered by this Act from holding closed sessions to consider information regarding appointment, employment or dismissal of an employee or officer, but no final action may be taken at a closed session. This Section does not prevent an agency of government from holding a closed session when Federal regulation requires it. This Section does not prevent a school board or any committee thereof from hearing student disciplinary cases or from discussing matters relating to individual students in special education programs as defined in Article 14 of The School Code at a closed session. This Section does not prevent an advisory committee appointed to provide a public body with professional consultation on matters germane to its field of competence from holding a closed session to consider matters of professional ethics or performance.